

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STRIKE 3 HOLDINGS, LLC, a Delaware
corporation,

Plaintiff,

vs.

JOHN DOE subscriber assigned IP address
73.225.38.130,

Defendant.

Case No.: 2:17-cv-01731-TSZ

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

Counsel for Plaintiff Strike 3 Holdings, LLC (“Plaintiff”) and counsel for Defendant John Doe subscriber assigned IP address 73.225.38.130 (“Defendant”) hereby submit this JOINT STATUS REPORT AND DISCOVERY PLAN pursuant to the Honorable Judge Zilly’s Standing Order dated February 16, 2018 (DK # 19) in the above action.

1. Statement of the Nature and Complexity of the Case

Plaintiff:

This is a copyright infringement case against an anonymous Defendant in which Plaintiff knows only by an IP address. Plaintiff alleges that Defendant infringed 80 of Plaintiff’s movies over several months. Defendant’s ISP Comcast Cable was able to identify Defendant in this lawsuit, however, Defendant’s identity has not yet been made known to Plaintiff.

1 This case is complex in that it involves anonymous infringement over the Internet and
2 Plaintiff does not know the identity of the Defendant. Defendant's statement of the case below
3 is filled with false, argumentative, irrelevant and improper statements not appropriate for a Joint
4 Status Report and Discovery Plan, and therefore Plaintiff will not address them at this time.

5 **Defendant:**

6 This is a nationwide copyright monetization program (600+ cases) run by the same
7 lawyer who managed the 5000+ Malibu Media (a pornographic studio) cases that were filed
8 from 2012 to 2017 (Emilie Kennedy). Plaintiff's engage in a "sue and settle" business model
9 using inaccurate, unverified, "forensic software" located in Germany. The objective of the
10 litigation is not a trial, instead *de minimus* payouts of 2-10K. Defendant is a retired cop who
11 has no interest in being extorted.

12 **2. A Proposed Deadline for the Joining of Additional Parties.**

13 **Plaintiff:**

14 Because Plaintiff does not know Defendant's identity, Plaintiff cannot anticipate
15 whether other parties should be joined. In light of this, Plaintiff requests the deadline to join
16 additional parties be sixty (60) days after Plaintiff receives Defendant's identity. This request is
17 fair because once Plaintiff receives Defendant's identity, it will need to conduct an investigation
18 and discovery into who used or had access to Defendant's Internet and knew of the
19 infringement, which may reveal additional defendants who will need to be added to this matter.

20 **Defendant:**

21 Defendant requests that amendments be made for 150 days after the scheduling order
22 issues. This is in view of the newly disclosed entities that are associated with the production of
23 the short pornographic works at issue.

24 **3. Consent to the Assignment of this Case to a Full Time Magistrate Judge.**

25 No.
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1 **4. A discovery plan that states, by corresponding paragraph letters (A, B, etc.),**
2 **the parties' views and proposals on all items in Fed. R. Civ. P. 26(f)(3), which includes the**
3 **following topics:**

4 (A) Initial disclosures;

5 The parties have not exchanged the information required by Fed. R. Civ. P. 26(a)(1), but
6 will do so by no later than **April 20, 2018**.

7 (B) Subjects, timing, and potential phasing of discovery;

8 **Plaintiff:**

9 The subjects upon which Plaintiff will seek discovery are set forth below in Section 5(E)
10 below. Plaintiff does not believe there should be any particular phasing of discovery.

11 **Defendant:**

12 Defendant believes there are four subject areas of discovery – (1) creation and
13 ownership of the pornographic works; (2) licensing agreements with key partners, such as
14 pornhub.com; (3) DMCA notices given to the ISP, in this case Comcast; and (4) efficacy and
15 reliability of the forensic software that be used to support any evidence.

16 (C) Electronically stored information;

17 **Plaintiff:**

18 Plaintiff anticipates that evidence supporting the parties' claims and defenses will rely
19 heavily on discovery involving extensive electronically stored information. Specifically,
20 Plaintiff anticipates that it will need to receive and examine Defendant's electronic devices,
21 Internet, router, and other devices he uses to connect to and operate on the Internet. Moreover,
22 Plaintiff will subpoena Comcast for evidence of DMCA notices Defendant has received
23 regarding the ongoing copyright infringement emanating from his account.

24 **Defendant:**

25 Defendant believes there are four subject areas of discovery – (1) creation and
26 ownership of the pornographic works; (2) licensing agreements with key pornographic movie
27 distribution partners, such as pornhub.com; (3) Plaintiff's DMCA notices sent to Comcast (if
28 any); and (4) efficacy and reliability of the IPP forensic software that was used to "detect" the

1 alleged infringements at issue. The only problem area may be the investigation of the IPP
2 software which is located in Germany.

3 Defendant has one hard drive that can be inspected under the WDWA model ESI rules
4 (Using Search Strings).

5 (D) Privilege issues;

6 **Plaintiff:**

7 Plaintiff anticipates attorney-client privileged issues regarding Plaintiff's employees and
8 in-house counsel.

9 **Defendant:**

10 Filings and communications with the Copyright office by Counsel are not protected by
11 the attorney-client privilege. This issue came up before Judge Alsup in Malibu Media v Doe
12 (ND 15-04441) and the court ordered the deposition of Attorney Emilie Kennedy.

13 (E) Proposed limitations on discovery; and

14 **Plaintiff:**

15 Plaintiff at this time is not aware of any proposed limitations that should be placed on
16 discovery.

17 **Defendant:**

18 Plaintiff's ESI requests are overly broad, intrusive, and expensive. The WDWA model
19 ESI rule should be adopted.

20 (F) The need for any discovery related orders.

21 **Plaintiff:**

22 Plaintiff intends to request the entry of a protective order where it can designate as
23 confidential certain information pertaining to Plaintiff's business, agreements, trade secrets,
24 employees, staff, and other personnel (particularly in light of Defendant's initial filings).

25 **Defendant:**

26 Defendant does not see the need for any protective orders that relate to information
27 already disclosed as the basis for the Ex-Parte motion for early discovery (See Docket 4). If

28 Plaintiff has made material representations, such as the financial success of the pornographic

studios, (See Lansky Declaration, Docket 4-1) then that information should not be subject to a protective order.

5. The parties' views, proposals, and agreements, by corresponding paragraph letters (A, B, etc.), on all items set forth in Local Civil Rule 26(f)(1), which includes the following topics:

(A) Prompt case resolution;

The parties are open to discussing potentially resolving this case in the near term before additional resources are spent.

(B) Alternative dispute resolution;

Plaintiff:

Plaintiff believes that this case would be best suitable for mediation after all discovery has been completed, but is also willing to participate in a settlement conference prior to the commencement of discovery.

Defendant:

Defendant believes a single settlement conference before the Magistrate for 4 hours would be the most cost effective. This was the procedure used in ND CAL for the 200+ consolidated Malibu Media cases.

(C) Related cases;

Currently, all related cases in the Western District of Washington are before the Honorable Judge Zilly.

(D) Discovery management;

Plaintiff: Plaintiff does not object to the numbering scheme set forth below by Defendant.

Defendant:

Defendant proposes documents should be produced in electronic or PDF format. Bates ranges would be Plaintiff 1-99,999 and Defendant 100,000-199,999.

(E) Anticipated discovery sought;

1 **Plaintiff:** Plaintiff intends to seek discovery with respect to all allegations contained in
2 the Complaint, any Answer, Affirmative Defenses, and counterclaims Defendant files. The
3 only discovery taken to date is Plaintiff's service of a subpoena on Defendant's ISP seeking
4 disclosure of Defendant's identity to Plaintiff. In addition to the voluntary initial disclosures,
5 Plaintiff intends to take Defendant's deposition, the deposition of persons identified by
6 Defendant in his answers to interrogatories and/or initial disclosures, Defendant's neighbors,
7 and Defendant's Internet Service Provider.

8 In discovery, Plaintiff will be requesting complete forensically sound copies of
9 Defendant's Hard Drives, preferably in EnCase E01 format. If examination of Defendant's
10 Hard Drives reveal evidence of spoliation, Plaintiff's position is that examination should further
11 include the restoration or recovery of deleted files or fragments. Nothing in this plan precludes
12 Plaintiff from an award of costs should it succeed at trial.

13 Plaintiff will be producing: (a) PCAPs for each copyrighted work infringed; (b) the
14 .torrent files relating to the infringed works; (c) the computer media files that correlate to each
15 of the .torrent files infringed by Defendant; (d) any reports for the PCAPs produced; (e)
16 control copies of the infringed works; (f) MySQL log file in excel or PDF extensively detailing
17 the numerous infringement by Defendant; (g) a list of Third-Party downloads committed by
18 Defendant's IP address through the BitTorrent program in excel or PDF; (h) copies of
19 certificates of Registration for Plaintiff's Works with the United States Copyright Office, or
20 complete applications demonstrating that the Works have been filed for registration. The
21 PCAPs, .torrent files, computer media files, and technical reports will be produced in their
22 native format and sent to defense counsel on a DVD disk or USB drive. All other documents
23 will be produced in readable form, either in excel (.xls) or PDF form.

24 **Defendant:** Defendant believes the WDWA model rule on ESI located at:
25 http://www.wawd.uscourts.gov/sites/wawd/files/06_ModelESIAgreement.pdf is appropriate
26 Defendant believes that "search string" of Defendant's hard drive is appropriate for data that
27 would identify the works in question – (e.g. torrent files, 16KB fragments, etc).
28

1 Defendant objects to subpoena's on neighbors, etc. given the nature of the material
2 involved, absent a protective order.

3 Defendant will be requesting the source code and all validation data of IPP's "Bittorrent
4 Monitoring System". Defendant will request that all witnesses (fact or otherwise) would have
5 field declarations in this case be available for deposition in the WDWA.

6 (F) Phasing of motions;

7 At this time, the parties do not believe that phasing motions is necessary.

8 (G) Preservation of discoverable information;

9 **Plaintiff:** Plaintiff's position is that Defendant must preserve all evidence as set forth in
10 the model rules. This includes preservation of all the following:

11 a. Defendant's laptops, desktops, tablets, external storage devices, portable
12 hard drives, external hard drives, Network Attached Storage, USB (thumb)
13 drives, and any other device which can be used to connect to the internet,
14 download media files, or store electronic data (collectively, "Hard Drives").
15 Defendant can achieve preservation by retaining an expert to create forensically
16 sound images of Defendant's Hard Drives;

17 b. All contents of any third party cloud storage service such as Amazon
18 Cloud Drive, Apple iCloud, DropBox, Google Drive, MediaFire, Mega,
19 Microsoft SkyDrive, OneDrive, SpiderOak, and Ubuntu One; and

20 c. Defendant's modem and router used in his home during the period of
21 recorded infringement.

22 d. All emails, notifications, or correspondence from Defendant's Internet
23 Service Provider ("ISP") to Defendant under the ISP's Copyright Alert System
24 ("CAS").

25 e. All emails, notifications, or correspondence from Defendant's Internet
26 Service Provider to Defendant regarding a DMCA notice.
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Defendant: Defendant's position is that the Model ESI rule located at:
http://www.wawd.uscourts.gov/sites/wawd/files/06_ModelESIAgreement.pdf should be adopted.

Plaintiff's requests are overbroad, expensive, etc. and do not comply with the most recent rules regarding ESI. Defendant believes there will be issues regarding the production, inspection, deposition of the principle investigator in case, IPP, which is located in Germany.

(H) Privilege issues;

Plaintiff: As set forth above, there may be privilege issues involving Plaintiff's in-house counsel.

Defendant: Hard drives may contain attorney-client, marital, tax, and/or financial information that is irrelevant to this case.

(I) Model Protocol for Discovery of ESI;

Plaintiff: Plaintiff does not object to using the Model Protocol for Discovery of ESI.

Defendant: Defendant's position is that the Model ESI rule located at:
http://www.wawd.uscourts.gov/sites/wawd/files/06_ModelESIAgreement.pdf should be adopted.

(J) Alternatives to Model Protocol.

Plaintiff: Plaintiff does not object to using the Model Protocol for Discovery of ESI.

Defendant: Defendant's position is that the Model ESI rule located at:
http://www.wawd.uscourts.gov/sites/wawd/files/06_ModelESIAgreement.pdf should be adopted.

6. The date by which discovery can be completed.

The parties propose January 15, 2019 as the date by which discovery is to be completed.

7. Whether the case should be bifurcated by trying the liability issues before the damages issues, or bifurcated in any other way.

The parties agree that no bifurcation is necessary.

1 **8. Whether the pretrial statements and pretrial order called for by Local Civil Rules**
2 **16(e), (h), (i), and (k), and 16.1 should be dispensed with in whole or in part for the sake of**
3 **economy.**

4 No.

5 **9. Any other suggestions for shortening or simplifying the case.**

6 **Plaintiff:**

7 Plaintiff should be provided with the name and identity of the Defendant. Without
8 knowing the identity of the Defendant, Plaintiff is unable to measure the strength of its case or
9 whether and how to Plaintiff should proceed.

10 **Defendant:**

11 Defendant should be provided all of the raw data that the German “forensic investigator”
12 IPP relied upon as a basis for making the claim and the “Ex Parte” discovery.

13 **10. The date the case will be ready for trial.**

14 April 15, 2019

15 **11. Whether the trial will be jury or non-jury.**

16 Jury.

17 **12. The number of trial days required.**

18 Five.

19 **13. The names, addresses, and telephone numbers of all trial counsel.**

20 **Plaintiff:**

21 Lincoln Bandlow, Fox Rothschild LLP, 10250 Century Park East, Suite 900, Los
22 Angeles, California 90067, (310) 228-2913 (admitted pro hac vice)

23 Bryan Case, Fox Rothschild LLP, 1001 Fourth Avenue, Suite 4500, Seattle, WA 98154
24 (206) 624-3600.

25 **Defendant:**

26 J. Curtis Edmondson, Edmondson IP Law, Venture Commerce Center, 3699 NE John
27 Olsen Ave, Hillsboro OR 97124. (503) 336-3749 or (503) 701-9719
28

1 **14. The dates on which the trial counsel may have complications to be considered in**
2 **setting a trial date.**

3 None.

4 **15. If, on the due date of the Report, all defendant(s) or respondent(s) have not been**
5 **served, counsel for the plaintiff shall advise the Court when service will be effected, why it**
6 **was not made earlier, and shall provide a proposed schedule for the required FRCP 26(f)**
7 **conference and FRCP 26(a) initial disclosures.**

8 Not applicable.

9 **16. Whether any party wishes a scheduling conference before the Court enters a**
10 **scheduling order in the case.**

11 **Plaintiff:**

12 Plaintiff does not wish such a conference.

13 **Defendant:**

14 Defendant would like a conference in view of the differences over how ESI will be
15 handled and potential privacy issues relating to ESI.

16 **17. List the date(s) that each and every nongovernmental corporate party filed its**
17 **disclosure statement pursuant to Fed. R. Civ. P. 7.1 and Local Civil Rule 7.1.**

18 **Plaintiff:**

19 Plaintiff filed its corporate disclosure statement on November 16, 2017.

20 **Defendant**

21 Defendant is not a corporate entity.

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27 ///

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1 DATED this 17th day of April, 2018.

2
3 EDMONDSON IP LAW

4 s/ J. Curtis Edmondson

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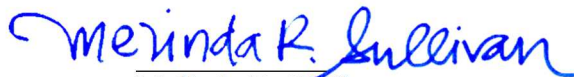
26 Email: lbandlow@foxrothschild.com

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

J. Curtis Edmondson, WSBA #43795	<input checked="" type="checkbox"/>	Via CM/ECF
399 NE John Olsen Avenue	<input type="checkbox"/>	Via U.S. Mail
Hillsboro, Oregon 97124	<input type="checkbox"/>	Via Messenger
Telephone: (503) 336-3749	<input type="checkbox"/>	Via Overnight Courier
Email: jcedmondson@edmolaw.com	<input type="checkbox"/>	Via Facsimile

DATED this 17th day of April, 2018.



Melinda R. Sullivan
Legal Administrative Assistant